

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 48 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
3 to 5 No

SANGEETABEN ARVINDBHAI SHAH

Versus

STATE OF GUJARAT

Appearance:

MR KR RAVAL for Petitioner

P.G. DESAI, PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 12/02/98

ORAL JUDGEMENT

1. Being aggrieved and dissatisfied by the Order dated 30th January, 1997, passed by the learned Metropolitan Magistrate, Ahmedabad, Court No.9, in the matter of C.I.D. Crime, Gandhinagar Zone Police Station Crime Registration No. 13/97, the present petitioner has filed the present Revision Application.

2. That Vide impugned Order, the learned Metropolitan Magistrate has granted remand custody of the present petitioner for four days. It may be noted that after the pronouncement of the Order by the learned Metropolitan Magistrate, Ahmedabad, Court No.9 on 31st January, 1997, an application was moved on behalf of the present petitioner, requesting the Court to suspend the operation of the order for a period of 7 days as petitioner as an accused of the said matter, desired to approach higher forum. That thereby vide further order, learned Metropolitan Magistrate suspended the operation of the Order till 5th February, 1998. That the present petitioner has lodged the petition on 2nd February, 1998 and it was notified for urgent hearing on 3rd February, 1998. Initially, notice was issued to respondent and service of which was waived by the learned APP appearing in this Court and matter was fixed for hearing on 5th February, 1998. That on 5th February, 1998, on account of continuous hearing of part heard matters, the hearing of the present matter could not be taken up. Therefore, the operation of the impugned order was stayed till 11.2.1998 and thereafter till today.

3. The present petitioner is an employee of Vaishali Emporium, situated on C.G. Road, Ahmedabad. That the management of said Vaishali Emporium had organised a sale of sari at Surat from 11.8.1997, and as such, the

employees including the present petitioner of said Vaishali Emporium, had gone to Surat. One Sushma Vaidya, who happens to be the Managing Director of the said Vaishali Emporium, had also attended the said sale at Surat on or about 12th August, 1997 to 14th August, 1997 and thereafter she was reported to be missing. That on the complaint of relative of said Sushma Vaidya, CID Crime, Ahmedabad has registered offences vide Crime Register No. I-13 of 1997 under Sections 120B, 364, 302, 201 against one Surendra alias Sunder Nandkishore Agarwal; (2) Manjuben Surendra Agarwal; (3) Anil Gupta of Surat; (4) Sunil Gupta of Surat and (5) Driver Ramchandra and has started investigation. That during the course of investigation, police recovered the skeleton of the dead body of said Sushma Vaidya. That during further investigation, it was revealed that deceased Sushma Vaidya occupied Room No. 204 of Hotel Everyday Inn at Surat. It is also revealed from the investigation that dead body of Sushma Vaidya was found hanging from a fan in the said Room No. 204 of Hotel Everyday Inn, on or

about 16th August, 1997. According to Investigation Agency, the accused had arranged to remove the dead body of deceased Sushma from Room No. 204 of Hotel Everyday Inn under the pretext that a staff member of Vaishali Emporium having taken ill and was being taken from the hotel for treatment. That it was further revealed that

dead body of deceased Sushma was taken in a car on a Highway leading from Bombay to Vapi and near Vapi, the dead body was burned by petrol and was buried near the road side.

4. According to Investigation Agency, the present petitioner is a close friend of deceased Sushma and trusted employee of principal accused Surendra Agarwal. That during the stay at Hotel Everyday Inn, present petitioner shared Room No. 204 with Sushma immediately prior to date of incidence when she was found missing. That according to Investigating Agency, on the fateful day, accused Manjuben, the wife of principal accused Surendra Agarwal along with her brother had visited Surat and thereby deceased Sushma was upset. That principal accused Surendra Agarwal instructed the present petitioner to go to the hotel from the hall where sale was organised and to pacify Sushma. That petitioner had gone to Room No. 204 of Hotel Everyday Inn on the said day and had conversation with Sushma. However, she found that deceased Sushma was in a very excited state and angry mood and she was not in a position to control her. That thereby by telephonic talk, she informed the principal accused Surendra Agarwal at the hall where sari sale was organised, the fact about the condition of

deceased Sushma and her problem that she cannot control her. According to Investigating Agency, on receipt of such information from present petitioner, Surendra Agarwal had instructed the present petitioner that he is sending assistance to help her. That thereafter the petitioner appears to have left the hotel premises and had gone to the hall where sari sale was organised and again after some time, in the company of Surendra Agarwal and Atul Sharma as well as Narendra Sharma, she came to Hotel Everyday Inn. That at that time, they found the door of Room No.204 closed from inside. That by opening the window, they saw in the room and found that deceased

Sushma was hanging from the fan. That door was opened and principal accused Surendra Agarwal has brought the body of Sushma from a hanging position and thereafter they decided to declare that one of the lady staff member having taken ill is being taken to hospital for treatment, and under the guise of such excuse, dead body of deceased Sushma be removed from Room No. 204. That Investigating Agency has also collected Postmortem Report dated 20th January, 1998. That according to the Investigating Agency, the postmortem report reveals the fact that death of Sushma was a homicidal death. That on 30th January, 1998, the Investigating Agency arrested the present petitioner as accused in the said Crime and produced before the Learned Metropolitan Magistrate, Ahmedabad, Court No.9.

5. That Dy. SPO, CID Crime, Ahmedabad Zone, moved an application claiming remand of the petitioner contending the fact found during the initial stage of investigation and claiming remand custody on the ground that Investigating Agency have reason to believe that petitioner is involved in a criminal conspiracy from inception and as such in order to investigate the role played by each of the accused, remand is necessary. It is further claimed that the sari sale at Surat was organised only as a part of said criminal conspiracy, to commit the murder of Sushma. In order to investigate the fact about the said aspect, custody is necessary. That personal belongings of deceased Sushma is required to be recovered and for that purpose, custody is necessary.

6. The claim of remand was opposed on behalf of the present petitioner. However, by impugned order, learned Metropolitan Magistrate, Ahmedabad, Court No.9 has granted the remand for four days and as such impugned order is challenged.

7. Learned Senior Counsel Shri A.D. Shah appearing on behalf of the petitioner has contended that impugned order is illegal, arbitrary and bad in law because learned Metropolitan Magistrate has passed the said order

mechanically and without considering the facts presented before him on behalf of the petitioner. Shri Shah very vehemently urged that Investigating Agency has made the

present petitioner as accused in the said case only with a view to discard her previous statement recorded by the Investigating Agency, according to which, suicidal death by Sushma could be supported. Shri Shah has submitted that Investigating Agency desired a pressure tactics to compel the petitioner to give such a statement, which might support the theory desired by them involving the accuseds in a serious case of murder. That petitioner being an young lady, coming from a middle class family, was employed in a gainful activity. That petitioner has all the while cooperated with the Investigating Agency and she was interrogated on various dates from time to time. That since 11th December, 1997 till January, Investigating Agency has sufficient time to interrogate the present petitioner and thereby no remand is necessary and the application could have been rejected by the Magistrate. Shri A.D. Shah has referred to and relied on following authorities in support of his submission.

(in) AIR 1978 SC page 1016

(ii) AIR 1977 SC page 1489

(iii) 1997 SCC Vol.2 page 3806 and page 3868

Shri Shah has also submitted xerox copy of the judgment delivered by the Supreme Court in the matter of SLP

(Criminal) No. 713/93 decided on 30th April, 1993 and also given two xerox copies of the judgment of the Gujarat High Court delivered in the matter of Criminal Revision Application No. 2928 of 1995, decided on 24th November, 1995 and Criminal Misc. Application No. 340 of 1981.

8. As against that, learned P.P. Shri P.G. Desai has taken me through the police diary maintained by the Investigating Agency and other papers including the postmortem report and has contended that during earlier interrogation, petitioner has given different stories. That she being a trusted employee of principal accused, she has deliberately suppressed the fact. That she has changed the version from time to time and has given contradictory version to mislead the investigation. That at the instance of investigating Agency, the petitioner was subjected to lie - detection test and it is found that she is suppressing some facts. Under the circumstances, custodial interrogation of the present petitioner is necessary to complete the investigation.

9. That I have carefully gone through the authorities cited at Bar. I have also gone through the

police papers including the police diary shown to me by the learned PP. It is needless to state that proposition of law is well accepted that custodial interrogation is necessary for effective investigation depending upon the

facts and circumstances involved in each case. That in the instant case, the initial conduct of the present petitioner suggests that the petitioner has stated before the Investigating Agency the story as stated by principal accused and other accused. That considering the nature and gravity of the offence alleged and particularly the facts and circumstances apparent from the record of the case dairy, disclosing the conduct of the present petitioner, I hold that learned Magistrate is justified in granting remand for custodial interrogation. However, the question is whether four days remand could be justified or not. It may be noted that petitioner is a lady and as per the guidelines prescribed, the remand period should be as minimum as possible. Under the circumstances, I hold that though there is no illegality, arbitrariness or perversity in the order of the learned Metropolitan Magistrate in granting remand to the petitioner, the order passed by the learned Metropolitan Magistrate is required to modify for the purpose of reducing the duration of the remand. In my opinion, taking into consideration the overall view of the matter, two days remand shall be sufficient instead of four days. The Police authorities are directed to interrogate the petitioner as far as possible during day hours and to provide her necessary facilities including consultation with her lawyers, if necessary, according to their convenience.

10. On the basis of above stated discussion, Revision Application No. 48 of 1998 is partly allowed. That the impugned order dated 30th January, 1997 passed by the learned Metropolitan Magistrate, Ahmedabad, Court No.9, is modified to the extent of granting remand custody of the present petitioner for two days instead of four days. Rule to that extent is made absolute with no order as to costs. Interim relief granted earlier shall stand vacated.

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